

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21219
Docket Number MW-21290

Dana E. Eischen, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
(Norfolk and Western Railway Company
((Western Region)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Machine Operator R. L. Langdon was without just and sufficient cause (System File MW-MOB-74-12/E-31 Appn. 17082).

(2) Machine Operator R. L. Langdon be reinstated with seniority, vacation and all other rights unimpaired; the charges against him be stricken from his record; he be compensated for all wage loss suffered, all in accordance with Rule 20(g).

OPINION OF BOARD: Claimant, a machine operator with eight (8) years service, was dismissed from Carrier's service following hearing into charges that he removed Company gasoline without authorization.

A review of the hearing record establishes the following facts: 1) Carrier's security forces were investigating the disappearance of gasoline from Company supplies in 1974; 2) On April 19, 1974 Claimant was working as Drag Line Operator with a work train. A supply car containing gasoline, tools, etc. was coupled directly to the flat car upon which Claimant's machine was placed; 3) At approximately 1:00 p.m. on April 19, 1974 Claimant was observed by two of Carrier's security officers as he parked his personal automobile near the Drag Line and Supply Car, took several 5-gallon cans from his car, filled them with Company gasoline from the Supply Car, locked them in his trunk and drove away. As Claimant was departing he was apprehended by the officers and confronted with their observations. Claimant apparently told them he took the gas because he had driven many miles for Carrier without reimbursement. The officers confiscated the cans of gasoline. Claimant was taken to the Division Engineer's Office, the officers related their observations and conversation with Claimant, and the Assistant Division Engineer asked Claimant if he had anything to say. Claimant responded, "I have nothing to say." He was thereupon dismissed.

Later at an investigatory hearing held May 16, 1974 Claimant testified that he took the gasoline so he could fuel his machine. The record, however, shows that the Drag Line was parked directly next to the gasoline supply. Our review of the record, especially the fact that Claimant

stood silent in the face of a most serious accusation which jeopardized his employment and offered no explanation or disclaimer when he was accused of stealing and of admitting same to the officers, convinces us that substantial evidence supports Carrier's assessment of discipline. Nor in the circumstances is the ultimate penalty, dismissal from all services, unreasonably excessive. The claim is denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1976.